# IN THE HIGH COURT OF BOMBAY AT GOA

MISC.CIVIL APPLICATION NO. 37 OF 2007
IN
STAMP NUMBER MAIN NO. 35 OF 2007

MR. ANTONIO COLACO AND ANR ... Applicants
Versus
SHRI. MANUEL FRANCISCO XAVIER COLACO ... Respondent

Mr. Agnelo F. Diniz, Advocate for the applicants.

Ms. G. Kale, Advocate for the respondent.

Coram:- S.A.BOBDE, J.

Date:- 13th April, 2007

P.C.

This is an application for condonation of delay of a period of six months and seventeen days in filing the appeal. The decree was passed on 2.3.06. According to the applicants, they were unaware of the decree till 12.12.06, when the respondent filed his reply in Special Civil Suit No.142/92/A wherein the respondent mentioned that the appellate Judgment has been passed on 4.1.06 and the decree has been drawn on 2.3.06. Clearly from the date of knowledge, the appeal along with this application is filed by the applicants immediately upon reopening of the Court on 8.1.07.

2. The application for condonation of delay is, however, opposed by the learned Counsel for the respondent on the ground that the summons from the appellate Court must have been taken to have been duly served upon the applicants since the Bailiff attempted to serve the summons at the applicants' address i.e. "near Stella Maria Chapel, Stella Maria Colony, Miramar, Panaji, Goa". However, this was refused by the

applicant's wife. She also refused permission to the Bailiff to affix the summons on the front door of the house. The learned Counsel also relies on the Bailiff's report.

3. Having heard the matter at length, it seems that the respondent has deliberately created some confusion in order to assert that the applicants have been served. It is admitted on behalf of the respondent that the applicants are residing at Flat C-2, La Marina, Miramar, Panaji, Goa since 2003. Admittedly, the applicant No.1 is the brother of the respondent and the applicant No.2 is the wife of applicant No.1. It is, therefore, strange that the respondent attempted to serve the applicants on a different address i.e. Near Stella Maria Chapel, Stella Maria Colony, Miramar, Panaji, Goa on two occasions i.e. on 2.3.05 and 14.3.05. The contention on behalf of the respondent that the known address of the applicant i.e. Flat C-2, La Marina, Miramar, Panaji, Goa is the same as near Stella Maria Chapel, Stella Maria Colony, Miramar, Panaji, Goa, appears to be unsupported by any evidence to that effect.

4. In the circumstances, I find that the application for condonation of delay must be allowed and is, hereby, allowed.

S.A.BOBDE, J.

ssm.